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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Ji Pagsisihan,

Plaintiff

v.

Allstate Indemnity Company,

Defendant

2:16-cv-00072-JAD-VCF

**Order Granting Motion to Remand,
Denying Motion to Dismiss as Moot,
Remanding Case Back to Nevada State
Court, and Vacating Hearing**

[ECF 4, 9]

Ji Pagsisihan sues her insurer Allstate Indemnity Company for a handful of state-law claims, alleging that Allstate failed to adequately investigate her claim for medical and underinsured motorist coverage after a January 2014 car accident.¹ Allstate removed the case from state court based on diversity of citizenship.² Pagsisihan moves to remand, arguing that the Allstate has not demonstrated that the amount-in-controversy requirement has been met.³ Because Allstate has not shown by a preponderance of the evidence that the amount in controversy exceeds \$75,000, I grant Pagsisihan's motion and remand this case back to Nevada's Eighth Judicial District Court, case no. A-15-728656-C.⁴ I also deny Allstate's motion to dismiss⁵ as moot and vacate the hearing.

Background

In January 2014, Pagsisihan sustained permanent bodily injuries in a car accident,⁶ and

¹ ECF 1-1.

² ECF 1.

³ ECF 9.

⁴ I find this motion appropriate for resolution without oral argument. L.R. 78-2.

⁵ ECF 4.

⁶ ECF 1-1 at ¶ 6.

1 demanded that Allstate pay her underinsured-policy limits of \$50,000.⁷ But despite her \$40,500.03
 2 in medical expenses, Pagsisihan alleges that Allstate responded with a settlement offer of just
 3 \$6,000.⁸ Pagsisihan asserts four claims: (1) breach of contract, (2) breach of the implied covenant of
 4 good faith and fair dealing, (3) Nevada Trade Practicess Act violations, and (4) intentional infliction
 5 of emotional distress.⁹ In her prayer for relief, Pagsisihan claims general damages in excess of
 6 \$10,000; special damages in excess of \$10,000; and punitive damages in excess of \$10,000.¹⁰

7 In its petition for removal, Allstate invokes this court’s diversity jurisdiction. Allstate argues
 8 that the amount in controversy exceeds \$75,000 because Pagsisihan claims \$40,500 in medical
 9 damages and has “demanded full policy limits of \$50,000, general damages, special damages,
 10 attorney costs and fees, damage for emotional distress, and punitive damages.”¹¹ Pagsisihan moves
 11 to remand, arguing that the only amount in controversy Allstate can show is \$60,00.01: \$50,000 in
 12 contractual damages (Pagsisihan’s policy limits) and \$10,000.01 for the bad faith/unfair-claims-
 13 handling claims.¹²

14 Discussion

15 A. Motion to Remand

16 When a case is filed in state court between parties who are citizens of different states, and the
 17 case value exceeds \$75,000, the defendant may remove the case to federal court.¹³ “Federal courts
 18 are courts of limited jurisdiction,”¹⁴ and there is a strong presumption against removal jurisdiction.

20 ⁷ *Id.* at ¶¶ 9–10.

21 ⁸ *Id.* at ¶ 13.

22 ⁹ *Id.* at 5–7.

23 ¹⁰ *Id.* at 8.

24 ¹¹ ECF 1 at 2.

25 ¹² ECF 9 at 2.

26 ¹³ 28 U.S.C. §§ 1332, 1441, 1446.

27 ¹⁴ *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994).

1 “[F]ederal jurisdiction must be rejected if there is any doubt as to the right of removal in the first
 2 instance.”¹⁵ The defendant always has the burden of establishing that removal is proper.¹⁶ This
 3 burden is usually satisfied if the plaintiff claims a sum greater than the threshold requirement.¹⁷ If
 4 the value of plaintiff’s claim is unclear, the defendant must prove by a preponderance of the evidence
 5 that the jurisdictional amount has been met.¹⁸ Defendants may rely on facts presented in the removal
 6 petition and any summary-judgment-type evidence that is related to the amount in controversy.¹⁹

7
 8 **B. Remand is required because Allstate has not shown that the amount in controversy exceeds \$75,000.**

9 The face of the complaint does not show that Pagsisihan claims damages in excess of
 10 \$75,000. Pagsisihan claims damages in excess of \$30,000 for general, special, and punitive
 11 damages. Because Pagsisihan does not explicitly claim damages in excess of \$75,000, Allstate must
 12 prove by a preponderance of the evidence that the jurisdictional amount has been met.²⁰

13 Pagsisihan alleges in her complaint—and Allstate offers no evidence to dispute—that she has
 14 incurred \$40,500.03 in medical expenses and that her policy limit is \$50,000. Thus, Allstate has
 15 shown, at most, only \$70,000 in damages: \$50,000 in special damages (assuming that Pagsisihan is
 16 entitled to the full policy amount), and in excess of \$20,000 for general and punitive damages.
 17 Allstate offers no evidence to show that Pagsisihan’s general and punitive damages exceed
 18 \$20,000.01, so I am left with the amounts alleged in the complaint. Because Allstate has not offered
 19 evidence showing that the amount in controversy more likely than not exceeds \$75,000, I grant
 20 Pagsisihan’s motion to remand.

21
 22 ¹⁵ *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992).

23 ¹⁶ *Id.*

24 ¹⁷ *Id.* (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288–99 (1938)).

25 ¹⁸ *Id.*; see also *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 395, 404 (9th Cir. 1996).

26 ¹⁹ *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003).

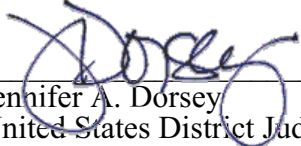
27 ²⁰ *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004) (internal citations omitted); see
 28 also *Sanchez*, 102 F.3d at 404.

Conclusion

Accordingly, IT IS HEREBY ORDERED that plaintiff's **Motion to Remand [ECF 9] is GRANTED**. This case is hereby remanded to the Eighth Judicial District Court, Clark County, Nevada, Case number A-15-728656-C.

IT IS FURTHER ORDERED that defendant's **Motion to Dismiss [ECF 4] is DENIED** as moot; the hearing set for **March 7, 2016**, is **VACATED**.

Dated this 4th day of March, 2016.



Jennifer A. Dorsey
United States District Judge